THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No. 3767 OF 2005

Date : 28-01-2006

Between:

Integrated Rural Health Women & Child Education Development Society, rep. by its Secretary N.Renuka.

.....Petitioner

and

Government of A.P., rep. by the Principal Secretary, Health, Medical and Family Welfare Department & Others.

.....Respondents

For the petitioner : MR.A.V.L.S.PRAKASH

For the Respondents : MR.D.V.NAGARJUNA BABU

MR.S.NIRANJAN REDDY, Smt.G.JHANSI

G.P.FOR MEDICAL HEALTH & FAMILY WELFARE AND
SMT.Y.PADMAVATHI (SC FOR NTR UNIVERSITY)

< Gist:

> Head Note:

? CITATIONS:

1. (2004) 1 SCC 86
2. (2002) 1 SCC 589
3. (2003) 9 SCC 564
4. 1993 (2) ALT 610 (FB)

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ORDER : (Per Hon'ble Sri Bilal Nazki, J)

This writ petition has been filed by a Society through its Secretary. It is stated in the petition that the Society was established in the year 1993 with the object of development of health education among women. The Society is running Paramedical and health institutions in Andhra Pradesh. Object of the Society is to develop medical education. The Society is interested in starting a medical college in Ranga Reddy District and it was waiting for a notification with regard to the establishment of a medical college especially for women. As there was no notification issued by the Government, the Society submitted an application on 27.5.2003 addressed to the Principal Secretary, Health, Medical and Family Welfare Department. There was no response to the application, but the petitioner learnt that the Government was considering an application filed by one Dr.V.R.K. Educational Society. The petitioner issued a notice on 25.1.2005 to the Government not to proceed in the matter in contravention of regulations of Medical Council of India and G.O.Ms.No. 250, dated

22.5.1992 and G.O.Ms.No.128, dated 30.4.1998. The Government was also informed through the notice, about the judgment of Supreme Court in **Government of A.P. v. Medwin Educational Society** case. No reply was given to the notice.

It is further submitted that to the best of the knowledge of petitioner, no notice was issued in terms of G.O.Ms.No.250 or G.O.Ms.No.128. The petitioner further stated that she came to know that Dr.V.R.K.Educational Society, which had applied after the petitioner had applied, had been able to get a certificate dated 3.2.2005, purporting it to be an Essentiality Certificate. This Certificate is questioned in the writ petition. It is submitted that the Certificate issued on 3.2.2005 was illegal and contrary to the provisions of Medical Council of India Regulations, 1999 and G.O.Ms.Nos.250 and 128.

At the first instance, a brief counter was filed by respondent No.5, in which it was stated that the writ petitioner has not furnished any particulars whatsoever, about the nature of its legal personality. The Secretary of the 5th respondent-Society further stated that his enquiries had revealed that there was no Society in the name of 'Integrated Rural Health Women & Child Education Development Society', either as a Registered Body or as a Trust in Hyderabad or Ranga Reddy Districts. The petitioner in the writ petition has not even stated whether the Society was a registered Society or not and she had not furnished the particulars of its registration. The cause title and the affidavit were vague. The deponent of the affidavit Smt. N.Renuka has also not furnished any particulars about her address – residential or official. It was contended that the writ petition had been filed only to harass respondent No.5 and according to the information of respondent No.5, the petitioner had been set up by one Sri Girinath, who is a Director of Vignan Education Development Society, Lawyerpet, Ongole, who has been fighting a litigation against M/s. Nimra Educational Society, which was granted Essentiality Certificate for starting a medical college at Ongole. The said Society is affiliated

to the 5th respondent, with some of the members of the Managing Committee being common. He has also stated in his affidavit that he was of the firm belief that the person who swore the affidavit filed in support of the writ petition does not exist and that he reserves his right to file a detailed counter affidavit after the petitioner discloses all the particulars.

When this affidavit was filed, this Court passed an order on 17.3.2005. The Court granted time to the petitioner to file additional affidavit and asked the Secretary to be present in the Court. She appeared on 24.3.2005 and stated before the Court her address and further submitted that initially the Society was registered as 'Vivekananda Educational Society' under Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli. Name of the Society was later on changed as 'Integrated Rural Health Women & Child Education Development Society'. The Society was registered vide Registration No.2840/93 in the office of the Registrar of Societies, Hyderabad. Copy of certificate, dated 30.7.1994 was shown to the Court. The counsel sought time to file an affidavit. An affidavit was accordingly filed, in which the facts, which were narrated to the Court verbally, were also stated.

Thereafter, the 5th respondent filed a detailed counter affidavit. In this counter also, the 5th respondent has challenged the *bonafides* of the petitioner, on the ground that the certified copies of the detailed particulars about the petitioner-Society were obtained from the Registrar of Societies and those documents do not show that Smt.N.Renuka had any connection with such Society. Respondent No.5 moved an application before the Registrar of Societies on 25th of March, 2005 and sought documents from the Registrar. One document reads as, *"The Committee below will function till the next General Body Meeting to dated in August, 1995."* Smt.N.Renuka's name is not shown as Office Bearer of the Society. The name of the Society was amended by a document, which also shows the Office Bearers of the Society. Sri K.Koteswara Reddy is shown as

Secretary. Smt.N.Renuka's name is not found in this Certificate also. None of the documents show that Smt.N.Renuka has anything to do with the Society. The latest document is dated 28.10.1999 regarding constitution of the Committee, which is "to dated" in November, 2000. It also does not show the name of Smt.N.Renuka. Therefore, we have serious doubts whether Smt.N.Renuka has anything to do with the Society, on behalf of which this writ petition has been filed. It may be pointed out that no rejoinder was filed to this counter affidavit, by the petitioner.

Now, coming to the merits of the case, the 5th respondent contended that the Essentiality Certificate issued by respondent No.1 to their Society was granted after inspection of the facilities offered by the Society to the satisfaction of the Inspection Committee constituted by the Government. It was contended further that the Essentiality Certificate granted to the 5th respondent-Society was not contrary to the Medical Council of India Regulations, 1999. At the time of grant of Essentiality Certificate, the Society had a built up area of one lakh Square feet in the land measuring 25 acres, which was earmarked by the Society for the establishment of a medical college. At that time, the 300-bed hospital was not fully functional, though all the necessary infrastructure and inputs towards making the hospital functional, were already in place. Issuance of Essentiality Certificate is a preliminary report on the desirability of establishing a medical college in the locality as well as the preparedness of the Society intending to establish such institution. The Essentiality Certificate has been granted as respondent No.5 was intending to establish a Muslim Women's Medical College, which was consistent with the object of the Society, as there were no other Muslim Women Colleges and the need of such establishment of college was there, therefore, they had proposed to the Government that they would like to establish a college.

The Government has not filed any counter.

In the light of these pleadings, it becomes necessary to have a

look at G.O.Ms.No.250, dated 22.5.1992, G.O.Ms.No.128, dated 30.4.1998, and also the Medical Council of India Regulations, 1999.

G.O.Ms.No.250, dated 22.5.1992 has been issued in exercise of powers conferred by Sections 20 and 21 read with Section 99 of the Andhra Pradesh Education Act, 1982 (hereinafter referred to as 'the Act'), by the State Government. The Rules framed under this G.O. are known as 'Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992 (hereinafter referred to as '1992 Rules').

Under Rule 3, it is stated –

> *"A notification shall be issued in daily newspapers calling for applications to be submitted in the form prescribed in Annexure-II to these rules from the Societies desirous of establishing colleges under the private sector specifying the last date for submitting the applications."*

G.O.Ms.No.128 was issued on 30.4.1998. By this G.O., it was stated that the Government had been examining the question of allowing establishment of Medical and Dental Colleges in the Private Sector and after detailed examination of the issue, the Government had decided that medical colleges be allowed to be established in private sector in the specified locations, one each at one location. These included Nizamabad, Mahabubnagar, Adilabad, Nellore and Eluru. Perhaps this was meant for medical colleges, because the 2nd para of the Government Order mentions the decision to allow establishment of private dental colleges in Vizianagaram, Nalgonda, Tirupati, Warangal and Ongole. A Committee was formed with Hon'ble Mr.Justice S.V.Maruti, as its Chairman and procedure was also laid down for the Committee.

Coming first to 1992 Rules in G.O.Ms.No.250, dated 22.5.1992, the contention of the petitioner is that in terms of Rule 3, the Government is supposed to issue a notification inviting applications in

a particular form and only after such a notification is issued, the applications can be entertained. According to the learned Counsel for petitioner, under sub-section (3) of Section 3, it has categorically been decided that no application from any educational society for establishment of unaided private college shall be entertained except in response to the notification issued.

Medical Council of India issued its regulations by notification dated 30th July 1999. The regulations are known as 'Establishment of Medical College Regulations, 1999' (hereinafter referred to as '1999 Regulations').

Under Regulation 3, it is stated –

> *"No person shall establish a medical college except after obtaining prior permission from the Central Government by submitting a Scheme annexed with these regulations."*

A Scheme is prescribed under Regulation 3 itself. In the first instance, it lays down the eligibility criteria, and under Serial No.2, it lays down the qualifying criteria. It is made clear that eligible persons shall qualify to apply for permission to establish a medical college, if certain conditions are fulfilled. One of the conditions to be fulfilled is condition No.3, which reads –

> *"3. that Essentiality Certificate in Form 2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/Union Territory Administration."*

This Court does not need to do any labour on the question that ultimately it is the Medical Council of India, which can authorize establishment of a medical college, but for establishing a medical college, certain conditions have to be fulfilled even before an application is made and one of the conditions is, as mentioned

hereinabove, that a 'No objection Certificate' from the State Government should be obtained. This 'No objection Certificate' from the State Government should certify about the need of the establishment of a college, availability of adequate clinical material as per the Government regulations. The Central regulations do not lay down that any applications will be invited for the purpose of establishing medical colleges, therefore, it is submitted by learned counsel for respondent No.5 that if the State Government decides not to invite applications in terms of 1992 Rules and does not entertain any application without an advertisement, then, there won't be any medical college established even if there is need to establish such a college.

Now, the only question that falls for our consideration in this writ petition is, whether an application could have been made by the 5th respondent-Society for grant of No objection Certificate /Essentiality Certificate without an advertisement having been issued by the Government in terms of 1992 Rules. The 1992 Rules make it clear that they have been framed in terms of the Andhra Pradesh Education Act, 1982. We have our own doubts whether under Andhra Pradesh Education Act, 1982, the Government is competent to make any rules, concerning the Education in Medicine in view of the fact that there is already a Central Act in place i.e. Indian Medical Council Act, 1956.

The Supreme Court though did not consider this question directly, held that the field was occupied by the Central Legislation and grant of Essentiality Certificate by a State Government was a function delegated by the Central Government to the State Governments in terms of the Schemes framed under Indian Medical Council Act, 1956. In this connection, reference may be made to the judgment of Supreme Court in **Medwin Educational Society** case (1 supra). The High Court, in the said case, had held that the State Government has no role to play in the matter of identification of the

sites, where the medical colleges are proposed to be established. But the Court held in para 46 –

> *"46. The upshot of the aforementioned discussions is that, in our opinion, the High Court has committed a manifest error in holding that the State has no role to play in the matter of identification of location of the sites where the medical colleges are proposed to be established. While granting an essentiality certificate, particularly having regard to the local needs, the State, in our considered view, has a positive role to play but the same would not mean that the State Government's say is final as ultimately final recommendations have to be made by the Medical Council of India and the Dental Council of India, as the case may be, whereafter the final decision has to be taken by the Central Government."*

The judgment referred also to one of the earlier judgments, to come to such conclusions. The Court took note of the judgment in **State of Maharashtra v. Indian Medical Assn.** Supreme Court took note of the scheme prepared by Medical Council of India, under which the Essentiality Certificate was required to be given by the State Government and in paragraphs 31 and 35, the Supreme Court held –

> *"31. By conferring such a power on the State Government, it is idle to contend that the Central Government has abdicated its powers in favour of the State in terms of Entry 66 List I of the Seventh Schedule of the Constitution of India. Parliament is empowered to enact an Act for the purpose of ensuring coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. By reason of such a provision the Central Government cannot be said to abdicate its power in favour of the State. Thereby only a part of its function is required to be carried out by the State."*

In para 35, it again said –

> *"35. It is interesting to note that keeping in view the practical*

difficulties faced by the Central Government or the statutory bodies like the Medical Council of India or the University Grants Commission, some power is sought to be delegated to the State so as to make the parliamentary statute completely workable. Such "play in the joint" is also desirable having regard to the federal structure of our Constitution."

In view of these Supreme Court judgments, it is clear that the State has a power to issue Essentiality Certificate, but not in terms of the Andhra Pradesh State Education Act, 1982, but under the scheme framed by the University Grants Commission, and to that extent, powers of the State Government under Andhra Pradesh Education Act, 1982 stood curtailed.

This question came to be considered by the Supreme Court in the case of **State of A.P. v. K.Purushotham Reddy.** The Court was considering the powers of the State Government under Andhra Pradesh State Council of Higher Education Act, 1988 vis-à-vis University Grants Commission Act, 1956. Though the Supreme Court upheld the State Act, but it held that the powers and functions of the State Government stood curtailed insofar as they are only to function in accordance with the guidelines issued by the University Grants Commission. Even otherwise, there can be two modes of identifying the places for establishment of medical colleges. One method is that the Government will take an exercise and identify the place or places where there is requirement of establishment of medical colleges and then invite applications as is envisaged under 1992 Rules. But there can be another mode of identifying the places and that is, when a particular Society comes forward and makes an application to the Government that the Society wants to establish a college at a particular place, the Government can consider such an application and if it finds it is essential to have a college, then it can grant the Essentiality Certificate. Even if A.P.Education Act, 1982 was

applicable, even then, this mode is possible, as has been held by a Full Bench of this Court in the case of **Society of St. Ann's v. Secretary to Govt. (Edn.)**. This Court held in this case that even if in the absence of notification by competent authority, it is open to any educational agency to make an application to the State Government for grant of permission for establishing an educational institution. In paragraph 50 of this judgment, the Full Bench held –

> *"**50**. The need for providing educational facilities to the people in the locality, contemplated under Section 20(3)(a)(i) has to be understood in the context of the educational needs of the locality identified by the competent authority under sub-section (1) of Section 20. Even in a case where the educational needs of a locality have been identified by a competent authority, the need for providing educational facilities to the people in the locality shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section 18 of the Act. If a competent authority has either not been appointed or after appointment it has not issued any notification calling for applications for establishing educational institutions as contemplated under sub-section (1) of Section 20, even then, it is open to any educational agency to apply to the State Government for the grant of permission for establishing an educational institution. In such a case, it is for the State Government to pass appropriate orders on the application submitted to it, on the basis of the principles underlying sub-section (3) of Section 20 and the policy decision, if any, taken by it as regards the need. But, the State Government has to take appropriate decision having regard to the relevant criteria, whether the educational needs of the locality or of the area of the entire State shall be taken into account."*

It was also stated by the learned counsel for the petitioner that in terms of Medical College Regulations, 1999, the format of Form-II was changed. In the past i.e. before 1999 Regulations, only a 'No objection Certificate' was needed, but in terms of 1999 Regulations, Essentiality Certificate was to be given in a format mentioned under Form-II. A Certificate has also to be issued by competent authority to the effect that –

a. *The applicant owns and manages a 300 bedded hospital which was established in ……*

b. *It is desirable to establish a medical college in the public interest;*

c. *Establishment of a medical college at …… by (the name of Society/Trust) is feasible;*

d. *Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government."*

Learned counsel for petitioner contends that Respondent No.5 did not satisfy all these conditions, therefore, the Essentiality Certificate granted to him should be quashed. It is not for this Court to enter into such a controversy. Respondent No.5 has stated in his counter affidavit that the Essentiality Certificate was granted to him after the facilities were inspected by a team appointed by the Government. If respondent No.5 did not satisfy the conditions, the Medical Council of India undoubtedly will not grant permission to establish a college, as the ultimate authority to allow a college to be established, is the Medical Council of India. Essentiality Certificate granted by the State Government does not grant any right to respondent No.5 to establish a college. It is only a formality and a step towards making an application to the Medical Council of India for grant of permission to establish a medical college.

Besides what has been stated by us hereinabove, we are also doubtful about the *bonafides* of the petitioner, as it has been

contended specifically by respondent No.5 in his counter affidavit that Smt.N.Renuka, who sworn in as Secretary of the petitioner-Society, is not Secretary of that Society, and it has not even been controverted by the petitioner.

For these reasons, we do not find merit in this writ petition, which is accordingly dismissed. No order as to costs.

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(BILAL NAZKI, J)

28-01-2006

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(K.C.BHANU, J)

N.B:-

L.R.copies to be marked.

(B/o)

ajr